IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.108 of 2006

Date of Decision: July 27, 2007

M/s Bhatinda Construction Company **....Petitioner**

through Mr.Darshan Garg, proprietor

v.

Chief Engineer, Bathinda Zone and others **....Respondents**

through Mr.S.K.Sharma, Advocate

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

In this matter the arbitration clause is admitted between the parties. The petitioner invoked the arbitration clause on 4.1.2005 and filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as, `the Act') on 14.2.2005 before the District Judge, Bathinda. However, in view of the law laid down in **SBP and Co. v. Patel Engineering Ltd. and another**, (2005)8 SCC 618, the matter was transferred to this Court.

Learned counsel appearing for the respondents has contended that the arbitrator was appointed on 24.2.2005. The proprietor of the petitioner-firm who is appearing in person says that the letter regarding appointment of arbitrator was received by him only on 9.3.2005. Even if I take the date to supply the

vacancy by the respondents as 24.2.2005, the petitioner has already filed a petition for appointment of an arbitrator under Section 11 of the Act on 14.2.2005. Reliance has been placed on a decision of the Supreme Court in **Datar Switchgears Ltd. v. Tata Finance Ltd.**, (2000)8 SCC 151 wherein the Supreme Court has held as under:-

> "So far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the court under Section 11, that would be sufficient. In other words, in cases arising under Section 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application under Section 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases."

On the basis of the aforesaid proposition of law, it is no more *res integra* that if a party has filed a petition under Section 11 of the Act, the other party loses its right, if the appointment of an arbitrator has not been made prior to the filing of petition under Section 11 of the Act. Therefore, I appoint Shri P.C.Singal (retired District & Sessions Judge, Member Indian council of Arbitrators) as the sole Arbitrator to adjudicate upon all the disputes between the parties.

The Arbitrator shall fix his own fee.

Intimation of appointment be sent to the Arbitrator.

Parties to appear before the Arbitrator on 1.9.2007 at 4.00 P.M.

Petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

July 27, 2007

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